

BEFORE THE
Federal Communications Commission
 WASHINGTON, D.C.

In the Matter of)

Rulemaking to Amend Parts 1, 2, 21, and 25)
 of the Commission's Rules to Redesignate)
 the 27.5-29.5 GHz Frequency Band, to)
 Reallocate the 29.5-30.0 GHz Frequency)
 Band, to Establish Rules and Policies for)
 Local Multipoint Distribution Service)
 and for Fixed Satellite Services)

CC Docket No. 92-297

REPLY COMMENTS OF TELIGENT, INC.

Teligent, Inc. ("Teligent") hereby submits its Reply Comments in the above-captioned proceeding.¹

I. INTRODUCTION

Although the present inquiry is limited to the ILEC eligibility restriction in LMDS and its scheduled sunset on June 30, 2000, the comments filed in response to the Notice make clear that the Commission should not consider this matter in a vacuum. The decision the Commission ultimately reaches in this proceeding will directly affect the provision of competitive local service, whether by fixed wireless or wireline technologies. Therefore, the appropriate course of action is not to limit examination of ILEC market power and the ILECs' anticompetitive incentives to one

¹ Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, CC Docket No. 92-297, *Sixth Notice of Proposed Rulemaking*, FCC 99-379 (rel. Dec. 13, 1999) ("Notice").

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fixed wireless service, namely LMDS, but to take a more comprehensive review of that market power and to address it accordingly.

Many commenters, including Teligent, urge the Commission to consider uniform rules for ILEC eligibility for all fixed wireless services. These views are supported by Commission precedent, as well as its recent Spectrum Policy Statement.² Several commenters, including Teligent, further urge the Commission to expeditiously address the more pervasive issue of ILEC control over bottleneck facilities, particularly the "last 100 feet," and act in the Competitive Networks proceeding to grant nondiscriminatory building access rights to all competitive carriers.³

II. THE COMMISSION MUST CONSISTENTLY RESOLVE WHETHER THE ILECS' MARKET POWER SHOULD PRECLUDE THEM FROM SECURING LICENSES IN ANY FIXED WIRELESS SERVICE RATHER THAN IN ONE SUCH SERVICE AMONG MANY.

Many of the commenters in this proceeding agree that the Commission's inquiry is too narrowly tailored to the ILEC's ability to foreclose competition in the local exchange market by obtaining LMDS licenses. The Commission's attention to the imminent sunset of the LMDS restriction, however, should be expanded to examine the implications of ILEC market power for the entire fixed wireless segment of the local transmission marketplace. In this light, it becomes clear that the existing eligibility restriction in LMDS should either be extended to other fixed

² Principles for Reallocation of Spectrum to Encourage the Development of Telecommunications Technologies for the New Millennium, Policy Statement, FCC 99-354 (rel. Nov. 22, 1999) ("Spectrum Policy Statement").

³ Promotion of Competitive Networks in Local Telecommunications Markets; et al., WT Docket No. 99-217; CC Docket No. 96-98, *Notice of Proposed Rulemaking and Notice of Inquiry in WT Docket No. 99-217, and Third Further Notice of Proposed Rulemaking in CC Docket No. 96-98*, 14 FCC Rcd 12673 (1999) ("Competitive Networks").

wireless bands used to provide similar services or eliminated entirely, precisely because it has not been extended to other fixed wireless bands. It is difficult to see how the existing eligibility disparity, if continued, can have a principled basis.

The Commission recently released a policy paper setting forth its goals for spectrum management that is intended to guide its decision making processes in these types of inquiries.⁴ In the Spectrum Policy Statement, the Commission directly addressed the issue of disparity among substitutable services, determining that disparity is not conducive to promoting the efficient utilization of spectrum. Specifically, it concluded that

[h]armonization [of rules for like services] provides regulatory neutrality to help establish a level playing field across technologies and thereby foster more effective competition. Such a structure would permit reliance on the marketplace to achieve the highest-valued use of the spectrum. It would also ensure that the Commission and its processes do not become a bottleneck in bringing new radio communications services and technologies to the public.⁵

At this time, the restriction on ILEC eligibility that exists in LMDS does not exist for the 24 GHz or the 39 GHz services -- two spectrum bands where carriers offer services that are largely substitutable with the services to be offered by LMDS licensees. PCIA points out that this regulatory disparity is inconsistent with the Spectrum Policy Statement, suggesting that the Commission should allow the restriction to sunset so that any entity would be permitted to hold an LMDS license.⁶ Similarly, another commenter suggests that the restriction be continued and

⁴ Spectrum Policy Statement at ¶ 2.

⁵ Id. at ¶ 9.

⁶ PCIA Comments at 2; see USTA Comments at 2 (noting that the Commission did not impose eligibility restrictions on 39 and 24 GHz licensees because the services offered at these different frequencies are extremely competitive with one another and with LMDS).

additionally extended to other fixed wireless services.⁷ The common theme among all commenters, however, is consistency and parity among fixed wireless licensees. To that end, whether the eligibility restriction is permitted to sunset is ultimately not a decision that should be limited solely to its impact on LMDS, but rather a decision that should be made applicable to all fixed wireless bands that offer substitutable services with LMDS.⁸

III. ILECS' PERVASIVE AND UBIQUITOUS ACCESS TO END-USERS REQUIRES THAT THE COMMISSION ACT TO ENSURE NONDISCRIMINATORY TELECOMMUNICATIONS CARRIER ACCESS TO MULTI-TENANT BUILDINGS.

While the Commission's inquiry in this proceeding is driven by the need and desire to further local competition with incumbents, the Commission must place the proper weight on the key issues impacting the provision of competitive local service -- especially the ILECs' control over and/or access to critical bottleneck facilities.⁹ Specifically, the ILECs' ubiquitous access to multi-tenant environments and the end-users in those buildings pose a serious impediment to furthering local competition when their competitors need to gain access to these same buildings but cannot. The Commission itself has recognized the significance of this issue, tentatively concluding that "[a]ccess by competing telecommunications service providers to customers in

⁷ See Gateway Telecom Comments at 2 (arguing that the ILEC eligibility restriction should be retained and that similar restrictions should be adopted for the 24 GHz and 39 GHz services) .

⁸ See PCIA Comments at 2; U S WEST Comments at 15; Gateway Telecom Comments at 2; USTA Comments at 2; RTG Comments at 6-7.

⁹ See PCIA Comments at 2-3 ("PCIA does not disagree with the Commission's tentative finding that LECs continue to dominate the market for local exchange and local exchange access for residential, small businesses and large businesses. . . . Nevertheless, PCIA does not believe that an ownership restriction limited to LMDS Block A licenses is the appropriate means for promoting competition in either the local telephony or video entertainment markets.") (citations omitted).

multiple tenant environments is critical to the successful development of competition in local telecommunications markets."¹⁰

Commenters in this proceeding agree. U S WEST notes that

the Commission once argued that the LEC eligibility restriction is an indispensable precondition of LMDS CLEC service, [but] the Commission now acknowledges that there are in fact "[a] number of factors [that] may affect the development and deployment of these markets." . . . They include . . . the inability of LMDS operators to obtain nondiscriminatory access to multiple dwelling units.¹¹

U S WEST concludes that if the Commission were to fail to accord these additional factors their due influence over local competition it would run afoul of judicial precedent.¹² Other commenters also demonstrate that incumbent carriers continue to hold a dominant position in the market for local exchange service and therefore the Commission must use the tools it has aggressively to ensure that they are unable to wield their market power in an anticompetitive manner.¹³ MCI WorldCom concludes that "[a]s the dominant providers of local exchange service, the ILECs have the incentive to forestall competition in this market in order to maintain their dominant positions. The ILECs already impede entry by competitors in the local exchange service market by limiting access to bottleneck facilities."¹⁴ In its Comments, Teligent demonstrated that ILECs also possess the market power to dictate to building owners the terms of the ILEC's access, to require terms

¹⁰ Competitive Networks at ¶ 29.

¹¹ U S WEST Comments at 6-7 (emphasis added) (citations omitted).

¹² U S WEST Comments at 8 (citations omitted).

¹³ See PCIA Comments at 3 ("As to local telephony, the Commission should instead continue to aggressively enforce sections 251 and 271 of the Communications Act. These provisions promote the creation of new, competitive broadband networks by requiring LECs to open their networks to competitors.").

¹⁴ MCI WorldCom Comments at 5.

that are far more favorable than those available to fixed wireless competitors, and to persuade building owners not to permit competing carriers to install rooftop antennas on their buildings.¹⁵ This unique ILEC ability, coupled with the building owners' already existing reluctance or refusal to provide CLECs building access, is a critical impediment to furthering local competition.

The mere acquisition of LMDS spectrum by ILECs does not itself pose a risk to local service competition. Rather, it is the marketplace disparities that exist because of the vestiges of the ILECs' local exchange monopoly that threaten to slow the deployment of competitive services to consumers. Teligent, along with other commenters, submits that the Commission's goals with respect to facilitating local competition can best be served by focusing on the ILECs' unique advantages over local competitors when they provide service, rather than the technology they can use to provide such service. An expeditious release of an order in its Competitive Networks proceeding adopting a regulatory framework that ensures nondiscriminatory telecommunications carrier access to multi-tenant buildings will best accomplish these Commission goals.

¹⁵ Teligent Comments at 10 (quoting comments filed in the Competitive Networks proceeding).

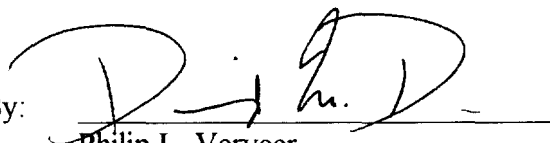
IV. CONCLUSION

The Commission should adopt policies that avoid the imposition of unnecessary cost or the creation of inadvertent distortions between and among substitutable technologies and services. The Commission must be sure that, without a reason to the contrary, any policy it adopts for an LMDS ILEC eligibility restriction is similarly adopted for comparable services such as 24 GHz and 39 GHz fixed wireless services. In short, if a continued restriction is appropriate, it is similarly warranted for other fixed wireless spectrum. Likewise, if there exists other more effective ways of promoting local competition, as Teligent and others have suggested herein, then that is the course the Commission should follow. Competition in the local exchange market will be furthered most dramatically when the Commission adopts a nondiscriminatory building access requirement that enables all competitors to access end-users in MTE's in the same manner that the ILECs currently can and, at least in this crucial area, limits the ability of ILECs to exercise this element of their market power.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Rosalyn Bethke, do hereby certify that on this 11th of February, 2000, copies of the attached document were served by hand-delivery on the following parties:

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